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ATTORNEY FOR APPELLANT:

**JEFFREY D. STONEBRAKER**  
Chief Public Defender  
Jeffersonville, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**GARY DAMON SECREST**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

ANTOINE L. JENKINS,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 10A01-0610-CR-457

APPEAL FROM THE CLARK SUPERIOR COURT  
The Honorable Cecile Blau, Judge  
Cause No. 10D02-0303-FA-136

**May 10, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Antoine Lamont Jenkins appeals the revocation of his probation. The certified charging information and probable cause affidavit submitted by the State were sufficient to demonstrate by a preponderance of the evidence Jenkins dealt cocaine while he was on probation. Therefore, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

In March 2003, the State charged Jenkins with a number of crimes. Eventually, Jenkins pled guilty to Class C felony possession of cocaine<sup>1</sup> and Class B misdemeanor false informing.<sup>2</sup> The court sentenced Jenkins to eight years and six months, but suspended four years and six months to probation.

On October 5, 2005, the State filed a petition to revoke Jenkins' probation, alleging Jenkins committed Class A felony dealing in cocaine<sup>3</sup> on September 21, 2005. The court held an evidentiary hearing on July 31, 2006, and found by a preponderance of the evidence Jenkins dealt cocaine on September 21. The court revoked Jenkins' probation and ordered him to serve the remainder of his sentence.

### **DISCUSSION AND DECISION**

Jenkins claims the State presented insufficient evidence he dealt cocaine. Probation revocations are civil proceedings, and therefore the State may prove a violation by only a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999), *reh'g denied*. On review, we consider only the evidence most favorable to the judgment, and we may not reweigh the evidence or reassess the credibility of the witnesses. *Id.* If

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<sup>1</sup> Ind. Code § 35-48-4-6(b)(1)(a).

<sup>2</sup> Ind. Code § 35-44-2-2(c)(1).

<sup>3</sup> Ind. Code § 35-48-4-1(a)(1).

there is substantial evidence of probative value, we will affirm the revocation of probation. *Id.*

Jenkins invites us to ignore the probable cause affidavit submitted in State's Exhibit 1 because it was not certified separately from the Information to which it was attached. Jenkins waived this argument because he did not present it to the trial court.<sup>4</sup> *Morgan v. State*, 755 N.E.2d 1070, 1077 (Ind. 2001) ("Defendant's argument on appeal is different than his argument at trial, and his objection is therefore waived."). Waiver notwithstanding, we find no reversible error.

"The rules [of evidence], other than those with respect to privileges, do not apply in . . . [p]roceedings relating to . . . sentencing, probation, or parole." Ind. Evidence Rule 101(c). Accordingly, the rule that hearsay is inadmissible and the exceptions to that rule "do not apply in proceedings relating to sentencing, probation, or parole." *Cox*, 706 N.E.2d at 550. Instead, the question is whether the evidence contained some indicia of reliability. *Id.* at 551. Both the Information and probable cause affidavit were stamped "Filed Sep 27 2005" by the "Clerk – Superior Court No. 2." (Ex. at 1, 2.) The probable cause affidavit was signed "under the penalties for perjury," (*id.* at 2), by a Jeffersonville Police Officer on "September 21<sup>st</sup>, 2005," (*id.*), and incorporated the attached "Case Report 2005-3907." (*Id.*) Each of the three pages of the Case Report indicated it was "PRINTED: 09-23-2005." (*Id.* at 3-5.) The probable cause affidavit contained sufficient indicia of reliability to be admitted by the trial court in a probation revocation

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<sup>4</sup> At the revocation hearing, Jenkins asserted the State's use of the probable cause affidavit and Information violated his constitutional right to confront and cross-examine the witnesses against him. He has not asserted that argument on appeal.

proceeding. *See, e.g., Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001) (certified copies of the court docket, police report and charging information regarding defendant’s new charge are “obviously relevant and certification of the documents by the court provides substantial indicia of their reliability”), *trans. denied* 761 N.E.2d 417 (Ind. 2001).

The evidence is sufficient to demonstrate Jenkins violated his probation by dealing cocaine. Jenkins was carrying the cell phone the confidential informant (“CI”) called to arrange a drug sale. Jenkins’ female companion in the car “could be heard during the initial phone call placed to the suspect, giving directions to the [meeting place] in the background,” (Ex. at 5), which suggests Jenkins was the one who talked to the CI to set up the buy.<sup>5</sup> Before the buy, the CI had no illegal drugs, but after the meeting, the CI had crack cocaine. Before the buy, the CI had \$400 of documented Task Force Funds, and after the meeting, the documented Task Force Funds were in the car Jenkins was driving. This evidence is sufficient to support an inference Jenkins was dealing cocaine. *See Pitman*, 749 N.E.2d at 559. We find no error in the revocation of Jenkins’ probation.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.

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<sup>5</sup> That Jenkins possessed the phone, talked to the CI on the phone, and “stated for the confidential information to meet *him* at the Sonic Restaurant,” (Ex. at 4), indicate the “suspect” throughout the probable cause affidavit was Jenkins. Even if, as Jenkins asserts, the probable cause affidavit could suggest to the impression that Jenkins’ female companion was the one who delivered the cocaine to the CI, the court still could have found by a preponderance of the evidence that Jenkins was dealing in cocaine. *See, e.g., Edgecomb v. State*, 673 N.E.2d 1185, 1193 (Ind. 1996) (discussing accomplice liability statute, which provides one is responsible for “acts done by his confederates which were a probable and natural consequence of their common plan”).